In the Supreme Court of the United States,

OCTOBER TERM, A. D. 1898.

PETITITION FOR WRIT OF CERTIORARI REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATES FOR ITS REVIEW AND DETERMINATION THE CASE OF

MARCUS A. SPURR, Plaintiff in Error,

vs.

UNITED STATES, Defendant in Error.

To the Honorable Supreme Court of the United States:

The petition of Marcus A. Spurr respectfully shows to this Honorable Court as follows:

FIRST.

Your petitioner, Marcus A. Spurr, respectfully shows that he is aggrieved by the verdict and judgment in the above entitled cause in the Circuit Court of the United States for the Middle District of Tennessee, pronounced on the 12th day of December, 1896, sentencing petitioner to two years and six months' imprisonment in the penitentiary of the State of New York, at Albany, N. Y., and by the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, pronounced on the 1st day of June, 1898, affirming the said judgment and sentence of the said Circuit Court.

SECOND.

Petitioner is not guilty of the offense for which he was charged, convicted, and sentenced in said cause, and is advised and believes that he was not tried and convicted according to law.

THIRD.

Petitioner further shows that prior to the 25th day of March, 1893, he was President of the Commercial National Bank, of Nashville, Tenn., a national banking corporation organized under the laws of the United States; that said Commercial National Bank failed and was placed in the hands of a receiver on or about the 25th day of March, 1893; and that, at the April term, 1893, of the United States Circuit Court for the Middle District of Tennessee, he was indicted in said court for the offense of willfully certifying five checks drawn upon said bank by Dobbins & Dazey, well knowing that said Dobbins & Dazey had not at that time on deposit in said bank sufficient funds to meet said checks. Petitioner pleaded not guilty, and was tried upon said charge, first, before Hon. George R. Sage and a jury, in the early part of 1894, when there was a disagreement of the jury, and a mistrial entered; then, again, before Hon. Wm. H. Taft and a jury, in November, 1895, when there was an acquittal upon the several counts based on one of the checks, and a disagreement of the jury as to the others, and a mistrial entered; and then, again, before Hon. H. F. Severens and a jury, in April, 1896, when there was an acquittal upon the several counts based upon one of the checks, and a conviction based upon the other three checks, with a recommendation to mercy by the jury.

FOURTH.

Petitioner further represents that motion for new trial and in arrest of judgment having been entered, the same was argued and

taken under advisement by the Court until the 12th day of December, 1896, when the judgment and sentence aforesaid were pronounced.

FIFTH.

Petitioner further represents that a bill of exceptions having been made and filed, petitioner prosecuted a writ of error from the said United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, where the case was argued before the Hon. Judges Barr, Ricks, and Swan, District Judges of said circuit, on the 17th day of November, 1897, and the cause taken under advisement until the 1st day of June, 1898, when the judgment of the Circuit Court aforesaid was affirmed; and thereafter a motion for a rehearing was duly entered and filed in said cause, and the same was, on the 8 day of Oct., 1898, overruled and denied.

SIXTH.

Petitioner's defense was that he was not a bookkeeper and had no practical knowledge of bookkeeping; that he had no knowledge at the time of the certification of the checks mentioned in the indictment that the drawers thereof had not sufficient funds on deposit in the bank to meet them, but, on the contrary, that he had at the time information from the cashier and a clerk of the bank that said drawers did have ample funds on deposit in the bank to meet each and every one of said checks, and that he honestly relied upon this information in the certification of said checks, and in good faith believed that ample funds of the said drawers were on deposit in the bank to meet them. The evidence introduced and relied upon by the Government to show petitioner's knowledge of the want of funds was circumstantial, consisting chiefly of the fact that the account of the drawers of

the checks upon the individual ledger of the bank appeared to be overdrawn, that petitioner could have ascertained this fact by an examination of the ledger, and that it was his duty to know the state of the account before certifying the checks. This theory of the case was earnestly pressed upon the Court and jury by the prosecution, and in this connection the Court charged the jury as follows:

> "It was the defendant's duty before certifying the checks, if he was not informed, to inform himself of the state of the account on which they were drawn. *From the existence of such a duty you may draw an inference of fact that he did so inform himself*, if he did not already know it; but the presumption is not an absolute one, and *the defendant may show, if he can, that he did not, in fact, acquire information of the truth.*"

To which instruction exception was duly taken, and error thereon assigned. And, again, in the same connection, after granting an instruction construing certain by-laws of the bank defining the duties and responsibilities of the president and cashier, and requiring of them the faithful and honest discharge of their duties, the Court added:

> "But I further charge you that the president is a general officer of the bank, and it is admitted that he had authority, notwithstanding these by-laws, to certify checks; and when the president assumed to certify these checks as good, *the faithful and honest discharge of his duties required him to be informed of the condition of the account on which they were drawn.*"

To which addition petitioner also duly excepted, and assigned error thereon. The Court also refused the following special instruction asked by petitioner:

> "The defendant's want of knowledge of the state of the account of Dobbins & Dazey at the time he certified the checks will be a complete defense to him unless you are satisfied, beyond a reasonable doubt, that such want of knowledge *proceeded from a will to disobey the law, or from an indifference to its commands.*"

To which refusal exception was duly taken, and error thereon assigned.

Petitioner testified that he did not know the state of this account, and there was other evidence, as the record will show, tending to establish that he did not know it, and that it was systematically kept from him by the cashier and other employees under him; and the Government undertook to convict him by a kind of imputed or constructive knowledge, and succeeded in doing so under the foregoing and similar instructions of the Court, which the record will fully disclose.

The Court failed, in the charge, not only to use the word "willfully" with reference to the false certification of the checks, but also to refer, in any way, to the Act of Congress of July 12, 1882, creating the offense for which petitioner was being tried; and after the jury had retired and been deliberating for some hours, they returned and handed to the Court the following request in writing:

> "We want the law as to the certification of checks when no money appeared to the credit of the drawer."

The Court replied as follows:

> "I cannot better answer this question which the jury has put to the Court than by reading the section of the Revised Statutes which relates to that subject [reads from Section 5208, R. S.]: 'It shall be unlawful for any of-

ficer, clerk, or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check.' Does this answer your question?"

Foreman of the jury:

"Yes, sir."

The Court:

"I read it again, so that you may all understand it. [The Court read again that part of Section 5208, R. S., quoted above, and added:] Is that all, gentlemen? The $30,000 was the credit allowed, and these overdrafts, as the Court understands from the testimony in the case, were in excess of that. The account of Dobbins & Dazey —the overdrafts—were in excess of the amount which Dobbins & Dazey had as a limit or line of credit.

"I charge you, in addition to the instructions I gave you this morning, that a check drawn upon a bank, where the drawer has no funds, creates no obligation against the bank, and it does not create any obligation until it is certified as good by an officer of the bank, and that makes the check good as to the holder of it, and the bank then becomes estopped, although there was no warrant for the drawing of the check, as against the *bona fide* holder. So that the obligation of the bank to meet it in such case is made so by the act of the officer who certifies it to be good. *That is what is meant by false certification. It is the certifying by an officer of a bank that a check is good when there are no funds there to meet it.*"

As the jury were retiring, counsel for defendant said to the Court that he thought what the jury wanted was the Act of 1882 making it a misdemeanor to willfully violate the section of the Revised Statutes which the Court had read to them, and that the Court ought to read and explain that Act to the jury. The Court asked if counsel referred to the Act prescribing the penalty for false certification, and, on being answered in the affirmative, stated that the jury had nothing to do with that.

To this action of the Court, in reading twice, in response to the jury's request, the Section 5208 of the Revised Statutes, and refusing to read and explain the Act of 1882, and to the instructions given them at that time as to the elements and constituents of a false certification, exception was duly taken by petitioner, and error thereon assigned.

Petitioner is advised and believes that the Court, by these instructions, left the jury to understand that the offense for which petitioner was being tried consisted of the certification of a check by an officer of a bank when there were not sufficient funds on deposit to meet it, and that whatever knowledge was essential in the certifying officer was to be inferred from his *duty* to know the condition of the drawer's account—the idea of a conscious, willful violation of the law being entirely ignored; and it was upon this theory only, as petitioner verily believes, that the Government was enabled to obtain his conviction.

SEVENTH.

Petitioner further shows that the theory of his defense was fairly put, hypothetically, in two special instructions asked by petitioner, numbered 5 and 7, there being in the record and before the jury competent evidence by numerous witnesses on both

sides of the case tending to establish each and every hypothetical statement in them. Petitioner's defense was not, in any part of the charge, put fully and fairly before the jury.

The fifth instruction was given, but so modified by the Court by the insertion of the words in brackets as to reverse its meaning entirely. As modified and given, it was as follows:

> "If you find from the proof that the account of Dobbins & Dazey upon the books of the bank was overdrawn continuously during the period covered by the checks certified by the defendant, and that the defendant was, in fact, ignorant of such overdraft, and that he certified the several checks mentioned in the indictment, believing at the time that the exchange deposited by Dobbins & Dazey on the days upon which said checks were certified was sufficient to cover the amount of said checks [besides the overdraft then existing], then he is not guilty, and you should acquit him unless such ignorance of the overdraft was willful, as elsewhere explained in the Court's instructions."

The seventh was refused. It was as follows:

> "If you find from the proof that the defendant believed and understood, at the time the account of Dobbins & Dazey was taken and during its existence at the Commercial National Bank, that they were engaged in the purchase of cotton and its shipment to New York and other Eastern points; that they had numerous branch offices and agents in various States of the South, where the cotton was purchased; that the Nashville office was the parent office of the firm, upon which drafts were drawn by the branches and agents at other points for the payment of the cotton so purchased, accompanied with bills of lading; that the payment of these drafts drawn upon the

parent house required large amounts of money; that to provide such funds the parent house expected to deposit, and that they were depositing, to their credit in the Commercial National Bank, drafts on their correspondents in New York secured by bills of lading for cotton, and then drawing their checks on the Commercial National Bank against such deposits; and that their deposits were expected to consist, and did consist, mainly of such New York drafts—if you believe from the proof that the defendant understood and believed that this course of business was to be, and was in fact being, pursued by Dobbins & Dazey at Nashville, and that the volume of such business would be large, and likely to require the sale of exchange by the bank in order to keep supplied in cash funds, and the defendant had no knowledge at the time he certified the checks mentioned in the indictment that Dobbins & Dazey, instead of conducting a legitimate business in this way, were wiring money to New York through another bank in order to sustain the system of kiting, as developed by the proof on the trial, and that, having no knowledge of the overdraft of Dobbins & Dazey's account in the bank, the defendant had in mind the course of business as he understood it to be, and supposed and believed they were making such daily deposits of New York exchange and then drawing against them, and that in each instance where he certified a check he had information from the cashier or exchange clerk, upon which he relied in good faith, that a sufficient amount had been deposited that day, and was in the bank, to cover the check certified, he would not be guilty under the indictment, and you should acquit him."

But the Court cut off from its context the latter part of the above instruction, modified it by the insertion of the words in

brackets, and gave this fragment of the instruction to the jury in that form as follows:

> "[If you find] that in each instance where he certified a check the defendant had information from the cashier or exchange clerk, upon which he relied in good faith, that a sufficient amount had been deposited that day, and was in the bank, to cover the check certified [I add, in addition to the existing overdraft], he would not be guilty under the indictment, and you should acquit him."

To the refusal of the said seventh instruction, and the modification of the fifth and of the latter part of the seventh, exceptions were duly taken by petitioner, and errors thereon assigned.

Petitioner is advised and believes that by this action of the Court, and especially by the modification of the fifth special instruction as above shown, the jury were in effect told that in order to be entitled to acquittal your petitioner must have believed the deposit sufficient to cover not only the check he certified, but also an overdraft, of which the jury might find he had no actual knowledge, and of which he could not be affected with knowledge by reason of his ignorance being willful, as elsewhere charged by the Court. In other words, as petitioner is advised, the Honorable Circuit Judge, by this modification of the fifth special instruction, himself made, absolutely, the *inference* of petitioner's knowledge of the state of the account which he elsewhere told the jury, as before shown, they might make from his *duty* to know it, and thereby removed all possibility of acquittal; for this instruction is plainly to the effect that petitioner should only be acquitted in the event the deposit was sufficient to cover both the check *and the overdraft*, although the jury should find that he was *ignorant of the overdraft*, and that his ignorance *was not willful*, so as to charge him with knowledge by shutting his eyes to the facts.

EIGHTH.

Petitioner further shows that, quoting from the bill of exceptions:

> " In the opening statement of counsel for the Government to the jury as to the facts and what the Government expected to prove as evidence that defendant Spurr certified the checks of Dobbins & Dazey willfully or with bad intent to injure the bank, he stated as follows:
>
> " ' 13. As further evidence that Spurr certified the checks of Dobbins & Dazey willfully or with bad intent to injure said bank, the Government expects to prove that in December, 1886, DeNeufville & Co. were stock brokers in New York, and that Porterfield sent them $25,000 of the moneys of the Commercial National Bank to be used by them as margins for buying certain stocks on speculation for Porterfield, Spurr, and others.
>
> " 'Afterwards the account was transferred from DeNeufville & Co. to Latham, Alexander & Co., who were bankers and brokers in New York.
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> " ' On May the 14th, 1887, certain of said speculative stocks was sold by Latham, Alexander & Co., at a loss of $9,762.35, one-third of which ($3,254.12) was admitted by the defendant to be due from him. As he did not have money enough in the bank to make good his share of said loss, he made his note of May 12, 1887, for the amount; which note has been renewed from time to time, and the last renewal note, which is for $5,500, is now in the hands of the bank's receiver, and the principal thereof is wholly unpaid.

" 'Another third of said loss ($3,254.12) was admitted by Porterfield to be due from him. As he did not have money enough in the bank to make good his share of said loss, he made his note on May 21, 1887, for $5,796.39 to cover his share of said loss and also another loss sustained by him on other speculations made through Latham, Alexander & Co.'

" And thereafter on the trial, and before the Government rested, and as a part of its case in chief, it was permitted to prove certain stock transactions of Spurr and Porterfield, of dates November 12, 1886, November 26, 1886, December 16, 1886, January 15, 1887, and other like transactions prior to January, 1887, over the objection and subject to the exception of plaintiff in error."

The checks certified, and for the certification of which your petitioner was indicted, were dated at different dates running from December 9, 1892, to February 27, 1893. This evidence was objected to upon the following grounds:

" First. Its irrelevancy to the charges of the indictment.

" Second. The remoteness in time of such transactions from the transactions involved in the charges of the indictment.

" Third. The want of any connection between such transactions and those involved in the charges of the indictment.

" Fourth. That such transactions were not shown to be fraudulent; nor, if so, that defendant had any knowledge of the fraud; and that they were neither similar nor con-

temporaneous transactions to the charges of the indictment, and their admission would tend to multiply the issues and to confuse the jury and prejudice the defendant."

This objection the Court overruled, and exception was duly taken by petitioner, and error thereon assigned; and it was thereupon agreed and understood, with the assent of the Court, that all subsequent testimony relating to collateral transactions of purchases and sales of stock, etc., should be treated as subject to the same objection and exception without repeating same at each offer. The evidence thus objected to and admitted by the Court, and to which this exception relates, is set out in the bill of exceptions (Printed Record, pp. 47-62) and is incorporated into the twelfth assignment of error.

The evidence was admitted by the Circuit Court, at the time, " as affecting the question of the respondent's right to rely on the representations made by Mr. Porterfield, or upon his assumed correctness of action and honesty of purpose; " yet in his charge to the jury the Court instructed them that they could look to it as bearing upon petitioner's knowledge and intent in the certification of the checks of Dobbins & Dazey, in the latter part of 1892 and the early part of 1893.

It was not claimed, nor shown, on behalf of the Government, that there was any connection whatever between the alleged stock transactions of 1886 and 1887 and the certification of the checks in 1892 and 1893, nor that said transactions were fraudulent, nor that the bank suffered any loss through them.

The Circuit Court of Appeals affirmed the correctness of the action of the trial court by saying:

" Evidence of similar transactions to illustrate the char-

acter of the act in question has repeatedly been held competent in both criminal and civil cases, and is often the only method of establishing the intent with which they were done.

"The objection that the collateral transactions were too remote is not tenable. It goes only to the weight of the testimony. The period of time within which the matter offered to establish the guilty purpose must have occurred to permit of their admission is largely discretionary with the Court."

It is contended by your petitioner:

First. That there is no possible similarity between the stock transactions of 1886 and 1887 and the certification of the checks of Dobbins & Dazey in December, 1892, and February, 1893.

Second. That the alleged stock transactions of 1886 and 1887 were not shown to have been either fraudulent or illegal, and could have had no possible bearing upon the intent with which petitioner certified the checks of Dobbins & Dazey.

Third. That the stock transactions of 1886 and 1887 were not only collateral, but were too remote to authorize the jury to draw any inference therefrom bearing upon the charge for which petitioner was indicted.

Fourth. That if said stock transactions of 1886 and 1887 were unlawful, they constituted in and of themselves an independent and separate crime, or violation of law, in no manner connected with or similar to the accusation against petitioner, and for which he was indicted.

But this contention of petitioner was overruled and denied by the trial court, when the evidence was offered, upon the erro-

neous theory that the transactions were competent for the purpose of showing that petitioner should not have relied upon the statements or honesty of Porterfield, the cashier; and afterwards, upon the contention of counsel for the Government, the jury were instructed that such transactions were relevant and competent for the purpose of showing knowledge on the part of petitioner that the account of Dobbins & Dazey was overdrawn at the bank on the date of the certification of these checks, and this latter ruling of the trial court was affirmed by the Circuit Court of Appeals upon the same erroneous theory and contention of counsel for the Government. No notice was taken by the Circuit Court of Appeals of the ground upon which this evidence was originally admitted.

NINTH.

Petitioner further shows that on the trial in the Circuit Court the charge of the Court, challenged by the sixth assignment of error, was as follows:

> "The Government is bound, in order to maintain any of the counts in this indictment, to prove:
>
> "First. That the defendant certified the check.
>
> "Second. That the drawers of the check had not sufficient funds in the bank to meet such check.
>
> "Third. That the defendant knew that there were no funds of the drawer in the bank sufficient to meet them.
>
> "This last element of the offense charged will be explained and its modification stated further on."

It was conceded on the trial:

First. That the defendant certified the checks.

Second. That the drawers of the check had not sufficient funds in the bank to meet such check when the certification took place.

But the defendant denied any knowledge of such condition of the account and asserted that he certified the checks innocently, and not willfully or with criminal intent. The Court in its charge substantially stated this concession in the following words, immediately following the above quotation:

> " Taking this evidence up in detail, it is not denied that the defendant certified these checks, and, secondly, that the account of the drawers was overdrawn when these certifications took place, but, thirdly, the defendant asserts that he was not cognizant of the fact that the account of the drawers was overdrawn at the time of his certification of the checks."

The modification referred to above was then stated in the following language of the Court:

> " Knowledge of the defendant of the state of Dobbins & Dazey's account when he certified the checks is thus made the pivotal question in the case. Upon this question of knowledge the Court charges you that it is not necessary for the Government to show that the defendant knew of the lack of funds of Dobbins & Dazey from an actual examination of the books at that time, or from any inquiries made at that time. If the defendant knew that he had good reason for believing Dobbins & Dazey's account to be overdrawn and refrained from making such inquiry for the reason that he knew the condition of the account, or because he was purposed to certify the check without reference to whether there were funds sufficient

to meet it or not, that is sufficient. That is to say, if he shut his eyes to what he believed was the fact, and kept himself in ignorance of the state of the account because he believed an examination would disclose the facts, this would be equivalent to express knowledge. Nor is it necessary to prove that the defendant knew just what was the extent of the overdraft on Dobbins & Dazey's account or the lack of funds to meet the checks. If he knew of the substance of the fact that Dobbins & Dazey had no funds there to meet their check, and that there was no warrant for marking the check 'Good,' that was sufficient.

* * * * * * * * *

"It was the defendant's duty before certifying the checks, if he was not informed, to inform himself of the state of the account on which they were drawn. From the existence of such a duty you may draw an inference of fact that he did so inform himself, if he did not already know it; but the presumption is not an absolute one, and the defendant may show, *if he can*, that he did not, in fact, acquire information of the truth."

And the Court further added:

"But I further charge you that the president is a general officer of the bank, and it is admitted that he had authority, notwithstanding these by-laws, to certify checks; and when the president assumed to certify these checks as good, *the faithful and honest discharge of his duties required him to be informed of the condition of the account on which they were drawn.*"

Petitioner is advised and believes that in the third element or clause of the above quoted definition of the crime charged there

was an erroneous omission of any reference to the essential bad intent or purpose which must accompany the act of certification, superadded to knowledge of the want of funds; and that in the subsequent explanations and modifications given by the Court of this third element of the offense, not only was this erroneous omission not supplied, but, on the contrary, the Government was relieved of the necessity of proving knowledge even, and the jury were told how they might *infer* knowledge from the *fact* of certification by petitioner as president when sufficient funds were wanting, and petitioner's *duty* under the law and the by-laws of the bank. And this erroneous view was further and finally emphasized by the Court when, on the return of the jury for further instructions, the Court told them in so many words that a false certification " is the certifying by an officer of a bank that a check is good when there are no funds there to meet it," making no reference to either the *knowledge* or to the *intent* accompanying the act, and refusing to charge upon a " willfully " false certification, as heretofore shown.

Petitioner is advised and believes that by these instructions he was practically prevented from interposing any defense whatever; for he was president of the bank, he did certify the checks, and the account of the drawers as it appeared on the individual ledger of the bank was at the time overdrawn, and none of these facts were at any time disputed or questioned by petitioner. The only facts disputed were the *knowledge* and *intent* of petitioner. The *intent* (implied by the use of the word " willfully " in the statute, and expressly charged in the indictment) was entirely ignored by the learned Circuit Judge; and as to the *knowledge*, the jury were told, in the first place, that several others things were the equivalent of knowledge, and, in the second place, that the by-laws of the bank imposed upon petitioner the faithful and honest discharge of his duties, and that " when the president as-

sumed to certify these checks as good, *the faithful and honest discharge of his duties required him to be informed of the condition of the account on which they were drawn.*"

These instructions, in connection with the undisputed facts, made out the case, according to the law as put by the charge, and left nothing for the jury but to return their verdict accordingly.

TENTH.

Petitioner instances these as some of the questions arising upon his said trial. He is advised that it is not necessary nor proper to cumber this petition with all of them, except to the extent as disclosed by the assignments of error hereinafter referred to.

ELEVENTH.

Petitioner was duly allowed by the said Circuit Court an appeal from its said judgment to the United States Circuit Court of Appeals for the Sixth Circuit, and it was ordered by the Court that a certified transcript of the record and of all proceedings in said case be transmitted to the said Circuit Court of Appeals, which was accordingly done.

TWELFTH.

The assignment of errors will be found at pp. 12-25 of the printed record accompanying this petition, and same is made part hereof.

THIRTEENTH.

On the 1st day of June, 1898, the United States Circuit Court of Appeals for the Sixth Circuit pronounced its judgment affirm-

ing the said judgment of the said Circuit Court. A copy of the entire record of the said case in the said Circuit Court of Appeals is herewith furnished and hereto annexed as a part of this application, in conformity with Rule 37 of this Honorable Court relative to cases from the Circuit Court of Appeals; and the same, including a copy of the opinion of the Circuit Court of Appeals, is marked "Exhibit A," and made a part of this petition.

FOURTEENTH.

Petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in the said case is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination under and in conformity with the law in such cases made and provided.

Wherefore, petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein entitled,

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to the end that the case may be reviewed and determined by this Court as by law in such cases made and provided, and that petitioner may have such other and further proper and equitable relief as to this Court may seem appropriate, and that the said judg-

ment of the said Circuit Court of Appeals and every part thereof may be reversed by this Honorable Court.

And your petitioner will ever pray.

MARCUS A. SPURR,
Petitioner.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF TENNESSEE. } ss.

Marcus A. Spurr, being duly sworn, says that he is the petitioner above named; that he has read the within and foregoing petition, by him subscribed, and that the facts therein stated are true to the best of his knowledge, information and belief.

MARCUS A. SPURR.

Subscribed and sworn to before me this the 22 day of Oct., 1898.

H. M. DOAK,
Clerk United States Circuit Court for the Middle District of Tennessee.

PITTS & MEEKS,
B. P. WAGGENER,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF TENNESSEE. } ss.

John A. Pitts, being duly sworn, says that he is one of the attorneys and counsel for Marcus A. Spurr, the petitioner above

named, and as such had personal charge of the case for him in the foregoing petition mentioned in the Circuit Court of the United States for the Middle District of Tennessee, and in the United States Circuit Court of Appeals for the Sixth Circuit; that he has read the said petition by said Marcus A. Spurr subscribed, and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge, information and belief.

JNO. A. PITTS.

Subscribed and sworn to before me this the 22 day of Oct., 1898.

H. M. DOAK,

Clerk United States Circuit Court for the Middle District of Tennessee.